Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 944 of 2001
(Old No. 1014 of 1999)

Babu Ram and others ……. Appellants

Versus

State of U.P. (now Uttarakhand) …….. Respondent

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Sri A.K. Sharma Advocate for appellants.
Sri P.S. Saun, A.G.A. for the respondent.

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Hon. Dharam Veer, J.

This Criminal Appeal has been filed against the order dated 24.04.1999 passed by IInd Additional District and Sessions Judge, Hardwar in S. T. No. 49 of 1996, whereby surety bonds of the appellants in the afore mentioned Sessions Trial were forfeited.

2. The facts of the case are that out of four appellants, appellants 1 and 2, namely, Babu Ram & Ram Kumar stood sureties for accused Harendra and appellants 3 and 4, namely, Vedpal & Samar Pal stood sureties for accused Mahabir.

3. When both accused Harendra and Mahabir did not appear before IInd Additional District and Sessions Judge, Haridwar on the date fixed, he issued shows-cause notice to their sureties to produce the accused persons before his Court. They sought one month's time to produce them. Therefore, on 24.04.199, the learned IInd Additional District and Sessions Judge passed the following order:

" Case called out.

Accused Satish is present.

Accused Mahabir and Harendra continue to be absent.

Their sureties sought one month's time to produce the accused persons. But the fact of the matter is that they have turned up in answer to notice issued vide order 11.03.1999.

Sureties failed to produce any explanation is answer to show-cause notice. Bonds are now forfeited.

Adjournment moved on behalf of sureties is rejected.

Issue recovery of Rs. 8000/- against sureties. Report by 05.06.1999.

Sd/ R.B.Rai
IInd A.D.J., Hardwar"

4. After the above order was passed, the sureties moved an application on the same day i.e. 24.04.1999 in the Court of IInd Additional District and Sessions Judge, Hardwar that they want to produce the accused Harendra Pal and Mahavir in the Court. Consequently, both the accused persons were ordered to be taken into custody.

5. Sri A.K.Sharma, the learned counsel for the appellants submitted that in the above circumstances when the accused persons were produced in the Court within half an hour of the passing of the order for recovery of Rs. 8000/- from the sureties, the order under appeal is too severe. There was no intention fault on the part of the sureties. The default in producing them in Court took place as the bus in which the accused persons were travelling was late. Therefore, the appellants prayed for setting aside of the order dated 24.04.1999 passed by the court below.

6. I have heard Sri A.K. Sharma, the learned counsel for the appellants and Sri P.S. Saun, the learned A.G.A.

7. Considering the above facts and circumstances of the case, I am of the view that the order under appeal may be modified as there was no intentional fault on the part of the sureties and the sureties may be ordered to pay lesser penalty for their fault in not producing the accused persons in Court. Therefore, the appeal deserves to be allowed in part.

8. The appeal is partly allowed and the order under appeal is modified to the extent that the amount of Rs. 8000/- ordered to be recovered from the sureties for their fault in not producing the accused persons in Court is reduced to Rs. 1000/- only (each). All the appellants (sureties) will now pay the amount of Rs. 1000/- (Rupees One Thousand only) each.

9. Consequently, the interim order dated 07.05.1999 stands vacated.

Dated: March 26, 2007 **(Dharam Veer, J.)**

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